

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DOUGLAS G. NEW</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 217,220
<b>MINERAL-RIGHT, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>COMMERCIAL UNION INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requested review of the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on December 16, 1996.

**ISSUES**

Claimant asked the Appeals Board to review the following issues:

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of his employment with the respondent.
- (2) Whether claimant gave respondent timely notice of the accident.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Both of the issues raised by the claimant in this appeal grant the Appeals Board jurisdiction to review a preliminary hearing order. See K.S.A. 1996 Supp. 44-534a.

The Administrative Law Judge had the opportunity to hear the in person testimony of the claimant, respondent's plant manager, Gary W. Steffens, and respondent's business manager, Camlyn Schneider, during the preliminary hearing proceedings held in this matter. Medical records of C. D. Knackstedt, D.O. and Deb A. Mowry, D.O. showing the medical treatment claimant received from March 12, 1992 through May 7, 1996, were admitted into evidence at the preliminary hearing.

Claimant alleged he injured his low back while performing his regular work activities for the respondent through his last day worked of April 1, 1996. Claimant contends he notified both Gary W. Steffens and the Camlyn Schneider that his low back problems were due to his work activities at the time he had to leave work on or about April 1, 1996. In contrast, both Gary W. Steffens and Camlyn Schneider testified the claimant had told them he had a work-related low back injury on December 5, 1995, but that injury resolved and thereafter claimant never related any further back problems to his work until a written claim for compensation was filed on the respondent on September 5, 1996.

Medical records of Dr. Knackstedt showed he treated claimant for various back problems from March 12, 1992 through April 22, 1996. The last medical note of Dr. Knackstedt that indicates claimant attributed his back injury to his work is dated December 8, 1995. Information contained in that note states claimant's back became symptomatic after lifting 50 pound bags on December 5, 1995. Claimant was seen one time for treatment in reference to that incident. The next time Dr. Knackstedt saw the claimant was April 8, 1996, for back pain and radicular pain in claimant's legs. Dr. Knackstedt's note of April 8, 1996, does not attribute claimant's back pain to his work.

At that time, Dr. Knackstedt referred claimant for further examination and treatment to physiatrist, Deb A. Mowry, D. O. Dr. Mowry examined and evaluated claimant on April 16, 1996. In a letter to Dr. Knackstedt dated April 16, 1996, Dr. Mowry reports claimant gave her the following history ". . . he has had low back pain for some time; did not give a specific incident of injury however, states he was playing golf one day and noticed he had back pain during the day and progressively got worse."

The Appeals Board finds when the Administrative Law Judge denied claimant preliminary benefits he had to find the representatives of the respondent's testimony more credible than the testimony of the claimant. The Appeals Board concludes when there is conflicting testimony as demonstrated in this case some deference should be given to the Administrative Law Judge as he was able to personally observe the demeanor of the witnesses and assess their credibility. Accordingly, giving some deference to the conclusions of the Administrative Law Judge, the Appeals Board finds claimant failed to prove that his present low back complaints were the result of his work activities performed while employed by respondent.

(2) The Appeals Board finds the issue of timely notice does not need to be addressed as it is rendered moot by the above finding.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that preliminary hearing Order of Administrative Law Judge Bruce E. Moore, dated December 16, 1996, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1997.

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BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS  
Kendall R. Cunningham, Wichita, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director